


Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Julia D'Alesandro, Audit Department

From:  Brent Johnson, General Counsel

Re: Defendants Entering Pleas Over the Phone for Offenses Requiring Mandatory Appearances

Date: October 28, 2004

You have asked the question of whether it is appropriate for mandatory cases to be resolved over the phone, and what documentation is required if this practice is permitted. According to the facts that you have provided, mandatory appearance cases are occasionally resolved through phone calls, particularly with out-of-state defendants. The cases are apparently resolved without the participation of the prosecutor.

Utah Code Ann. § 77-7-21(b) states that, "with the magistrate's approval, a person may voluntarily forfeit bail without appearance being required in any case of a class B misdemeanor or less." Thus, although the Uniform Fine and Bail Schedule states that certain offenses require a physical court appearance, justice court judges ultimately have the authority to excuse a defendant's appearance in any case that is before a justice court. A judge should use this option rarely, but that option is nevertheless available.

If a judge waives a defendant's appearance and allows a defendant to appear by telephone, the court should follow regular court procedures for resolving cases and accepting pleas. The court should never resolve a case without providing the prosecutor with an opportunity to participate in the disposition of the matter. Because the case is ultimately the prosecution's, the prosecutor must have an opportunity for input into the court's disposition. In some cases of which I am aware, prosecutors have given prior permission and notice that they do not need to be involved in certain types of cases and the court can proceed without the prosecutor's physical presence. As long as the prosecutor has an opportunity to participate, that concern will be satisfied. Otherwise, the prosecutor should be involved. Also, similar to discussions in other memoranda, the disposition of a case should be appropriately noted in the court docket and the docket should reflect how the case was handled. Please let me know if you have any questions about this.

The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.